

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 977(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 977(b). This opinion has not been certified for publication or ordered published for purposes of rule 977.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

ANTHONY TODD MILES,

Defendant and Appellant.

B162665

(Los Angeles County  
Super. Ct. No. KA048162)

APPEAL from a judgment of the Superior Court of Los Angeles County,  
Mark Grant Nelson, Judge. Affirmed.

Marylou Hillberg, under appointment by the Court of Appeal, for Defendant and  
Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney  
General, Pamela C. Hamanaka, Senior Assistant Attorney General, Stephen A. McEwen  
and Laura J. Hartquist, Deputy Attorneys General, for Plaintiff and Respondent.

---

Anthony Todd Miles appeals from the judgment entered following his convictions by jury of second degree burglary (Pen. Code, § 459; count one) and petty theft with a prior conviction (Pen. Code, § 666; count two), with court findings that he suffered six prior felony convictions (Pen. Code, § 667, subd. (d)), and four prior felony convictions for which he served separate prison terms (Pen. Code, § 667.5, subd. (b)). He was resentenced to prison for 25 years to life.<sup>1</sup>

In this case, we hold the trial court properly refused to dismiss, pursuant to Penal Code section 1385, any Three Strikes law prior felony convictions.

### ***FACTUAL SUMMARY***<sup>2</sup>

Mervyn's Department Store (Mervyn's) employed both defendant and his accomplice, Daniel Fregoso (Fregoso). According to Fregoso, defendant had previously told Fregoso he wanted Fregoso to give him an unauthorized employee discount. On April 8, 2000, Fregoso was working as a cashier at Mervyn's. Defendant brought about 22 items to Fregoso's register. Fregoso rang the items up, scanning them and then manually lowering the price by about 90 percent -- although employees were only entitled to a fifteen percent discount. The end result was that defendant paid only \$34.73 for property worth \$429.00. The store's in-house security personnel observed all of this "doctored" sales transaction as it was taking place.

Defendant left the store with the merchandise, followed by security. The security employees asked him to open the trunk of his car so that they could see his merchandise and the receipt. Defendant said he did not have the receipt, but one of the security employees saw a crumpled piece of paper under defendant's car, and, upon retrieving it,

---

<sup>1</sup> *People v. Miles* (Feb. 15, 2002, B148994), was appellant's first appeal. There, we affirmed the judgment except, in pertinent part, having concluded that the trial court erroneously denied appellant's request for bifurcation, we effectively vacated appellant's sentence, set aside his admissions that he suffered three prior felony convictions under the Three Strikes law (six were alleged), and remanded the matter for a limited new trial on the Three Strikes law allegations, and for resentencing.

<sup>2</sup> We have adopted the below factual summary from our decision in appellant's first appeal. (See fn. 1, *ante*.)

found it to be the receipt. Defendant returned to the store and was interviewed by the head of the loss prevention department, John Stagno (Stagno). According to Stagno, defendant admitted to him that he and Fregoso had arranged for Fregoso to sell defendant the merchandise for far less than its marked value, and also admitted that he had marked down a barbecue grill from \$99.99 to \$1.18.

Stagno also interviewed Fregoso, who admitted that he intentionally gave the 90 percent discount, and that he had structured the transaction in this way so that the register would show each item was scanned and purchased. After defendant and Fregoso made these admissions, the police department was called, and an officer took defendant into custody.

### ***CONTENTION***

Appellant contends that “[t]he imposition of a sentence of twenty-five years to life for a theft of less than \$400.00 was an abuse of judicial discretion.”

### ***DISCUSSION***

*The Trial Court Properly Refused To Dismiss, Pursuant To Penal Code Section 1385, Any Three Strikes Law Prior Felony Convictions.*

#### *1. Pertinent Facts.*<sup>3</sup>

Appellant’s preconviction probation report prepared for a May 2000 hearing, showed a significant criminal history. Defendant was born in 1962. In 1976, when he was not quite 14, he was arrested for burglary and spent four weeks ‘in placement.’ In 1977, when he was not quite 15, he was arrested for burglary, and spent nine weeks at Camp Kilpatrick as a result. In 1978, he was arrested for a residential burglary, and apparently was also arrested for carrying a concealed weapon,<sup>4</sup> and was sent to the California Youth Authority (CYA) for three years, but was paroled from CYA soon thereafter. In 1979, while on parole from CYA, he was arrested for assault with a deadly

---

<sup>3</sup> We have adopted much of the below recitation of appellant’s criminal history from our decision in appellant’s first appeal. (See fn. 1, *ante*.)

<sup>4</sup> According to defendant, his companion was carrying a gun, while he was carrying the bullets.

weapon on a peace officer or firefighter and sent back to CYA, paroled again, and then re-committed to CYA after being arrested and convicted for battery on a person in 1981.

In 1982, at the age of 19, defendant was convicted of robbery (case No. A377880) and sentenced to five years in prison. He was paroled not quite four years later, in July 1986. In October 1986, he was arrested for robbery, and convicted (case No. A791490) and sentenced to seven years in prison. According to defendant, this robbery involved using a gun to take the victim's car from the victim.

After this carjacking, defendant was released on parole in June 1991. In August 1991, he was arrested and charged with conspiracy to commit a crime, armed robbery, grant theft vehicles/vessels/etc., and assault with a firearm on a person. In 1992, in that case (case No. GA008481), he was convicted of four counts of second degree robbery, and sentenced to prison for eight years. According to defendant, he pulled a knife on a victim, took the victim's car, was involved in a speed chase, and then crashed the car.

In January 1992, he was charged with and convicted of escaping from jail with the use of force and sentenced to 16 months in prison. He had been in prison on December 20, 1991 pending a felony case hearing when he escaped. The probation report then noted that "criminal identification and investigation records indicate the defendant was re-sentenced on August 24, 1994, involving two additional counts -- 667(A) Penal Code, new term is 14 years."<sup>5</sup> (Capitalization omitted.)

According to a parole agent with whom the probation officer spoke, defendant had been released from state prison on June 11, 1999, and would be off parole as of June 11, 2002. However, defendant's parole office had recommended in a report that defendant be returned to custody. Thus, defendant was on parole for robbery at the time he committed the instant crimes, and his performance on parole was unsatisfactory.

---

<sup>5</sup> Section 667, subdivision (a) provides that any person convicted of a serious felony, who has previously been convicted of a serious felony, shall receive an additional five-year enhancement for each such prior conviction on charges brought and tried separately, with the terms of the present offense and the enhancements to run consecutively.

The probation officer made the following comments. “Before the court is a 37-year-old male who has completed three known prior state prison commitments and three prior California Youth Authority commitments as a juvenile. [¶] The defendant’s use of a multiple of AKA’s is indicative of a ‘career criminal’ and represents an effort on the defendant’s part to manipulate the justice system and avoid accountability for his actions. [¶] . . . The defendant’s prior arrest history includes several robbery convictions indicating that his alleged involvement in the matter before the court is part of a ‘pattern of behavior’ rather, than an ‘unusual’ act on the part of the defendant. [¶] . . . It further appears the defendant has a propensity for attempting to obtain items through theft and intimidation rather than through employment or personal labor.”<sup>6</sup>

The report listed as aggravating factors that the planning, sophistication, or professionalism with which the crime was carried out indicated premeditation; appellant had engaged in a pattern of violent conduct which indicated a serious danger to society; and appellant’s prior convictions as an adult or juvenile adjudications of commissions of crimes were numerous or of increasing seriousness. The report listed as additional aggravating factors that appellant had served three prior prison terms; he was on parole when he committed the present offenses; and his prior performance on parole was unsatisfactory. The report listed as a mitigating factor that appellant voluntarily acknowledged wrongdoing prior to arrest or at an early stage of the criminal process. The report recommended imprisonment for the “mid-base term.”

The second amended information filed August 27, 2002, alleged, inter alia, that appellant suffered six prior felony convictions for purposes of the Three Strikes law, that is, a 1982 robbery conviction (case No. A377880), a 1987 robbery conviction (case No. A791490), and four robbery convictions (case No. GA008481).<sup>7</sup>

---

<sup>6</sup> A postconviction probation report prepared for a November 2000 hearing reflects similar information.

<sup>7</sup> In appellant’s previous appeal, we effectively vacated appellant’s admissions to three of these same six allegations. (See fn. 1, *ante*.)

On August 27, 2002, appellant filed a motion to strike, pursuant to Penal Code section 1385, all but one prior felony conviction under the Three Strikes law. The motion urged that the value of the stolen goods in the present case was small; there was no violence or threat thereof during the present offense; appellant was apprehended without incident by store security personnel; and no one suffered physical injury. The motion also urged that appellant was sorry for what he had done; he hoped to reenter the work force upon his release; and his family supported him.

On August 28, 2002, following a court trial, the above Three Strikes law allegations were found true. At sentencing on September 30, 2002, following argument on appellant's motion,<sup>8</sup> the court stated, "First of all, the court has read and considered the probation officer's report as well as motions contained within the file relating to sentencing. The court is aware of its discretion, two [*sic*] strike priors pursuant to People versus Romero and Williams and subsequent cases.

"The court has also read and considered the appellate opinion and the remittitur, which I think is a very clear and exhaustive recapitulation of the defendant's criminal history as it relates to this matter."

The court then opined that, based on appellant's "criminal background and history," he fell within the spirit and intent of the Three Strikes law. The court stated, "He has six prior convictions for robbery. He has led a life that is not in any way exemplary or for that matter, in any way, shape, or form deserving of considerable relief that he is requesting. And, therefore, this court declines to exercise its discretion pursuant to Romero and Williams. [¶] The court also relies and would, for a lack of a better term, incorporate the appellate court's decision discussing the Romero issue in the remittitur, incorporate that into the court's opinion and in denying the motion pursuant to People versus Romero and Williams." The court sentenced appellant to prison on count

---

<sup>8</sup> The People asked the court to consider the People's sentencing memorandum, and that part of the decision in appellants' previous appeal (see fn. 1, *ante*) in which this court rejected appellant's contentions that (1) the trial court abused its discretion by refusing to strike prior felony convictions, and (2) his sentence constituted cruel and unusual punishment.

one for 25 years to life pursuant to the Three Strikes law, and suspended imposition of sentence on count two pursuant to Penal Code section 654.

2. *Analysis.*

The court read the probation report, People's sentencing memorandum, and appellant's written motion to strike prior felony convictions, and heard argument of counsel. If we accepted appellant's claims, we would be holding that the court's denial of appellant's request to strike prior felony convictions was irrational, capricious, or patently absurd (*People v. Delgado* (1992) 10 Cal.App.4th 1837, 1845; *In re Arthur C.* (1985) 176 Cal.App.3d 442, 446) and without even a fairly debatable justification. (*People v. Clark* (1992) 3 Cal.4th 41, 111.) Based on the record in the present case, we cannot come to that conclusion. In light of the nature and circumstances of appellant's current felony offenses and the qualifying prior felony convictions, and the particulars of his background, character, and prospects, appellant cannot be deemed outside the spirit of the Three Strikes law as to the prior felony convictions, and may not be treated as though he previously had not suffered them. (Cf. *People v. Williams* (1998) 17 Cal.4th 148, 161-164.)

We hold that the trial court's order refusing to strike any prior felony convictions which appellant suffered under the Three Strikes law was sound, and not an abuse of discretion. (Cf. *People v. Williams, supra*, 17 Cal.4th at pp. 158-164; *People v. DeGuzman* (1996) 49 Cal.App.4th 1049, 1054-1055; *People v. Askey* (1996) 49 Cal.App.4th 381, 389.) None of the cases cited by appellant, or his argument, compels a contrary conclusion.

***DISPOSITION***

The judgment is affirmed.

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

CROSKEY, Acting P.J.

We concur:

KITCHING, J.

ALDRICH, J.